

REMARKS AND RESPONSES

Claims 1, 9-12 have been amended. Support for the amendments is found in the existing claims and specification as filed. Accordingly, the amendments do not constitute the addition of new matter.

Claims 13 have been cancelled without prejudice. As a result, claims 1-12 remain pending in the present application. Reconsideration of the application in view of the foregoing amendments and following comments is respectfully requested.

Claim Rejection - 35 U.S.C. §112, Second Paragraph

With respect to Paragraphs 4 and 5 of the Office Action, the Office Action rejected claim 13 under 35 U.S.C. §112 as being indefinite. Specially, the Office Action stated that these claims are rejected for use of the term "preferred" to make the claim language indefinite. Applicant cancels Claim 13.

Accordingly, applicants respectfully request that the rejection be withdrawn.

Reconsideration and withdrawal of this rejection is respectfully requested.

Claim Rejection - 35 U.S.C. §102

With respect to Paragraph 6 and 7 of the Office Action, the Office Action rejected claims 1,2,6,7 and 9-13 under 35 U.S.C. §102(b) as being anticipated by Goossen (U.S. 5,943,155). Of the rejected claims, only claim 1 is independent.

Accordingly, applicants respectfully request that the rejection be withdrawn.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). **"The identical invention must be shown in as complete detail as is contained in the ... claim."** *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (MPEP §2131)

With particular reference to Goossen, the purpose of the prior art is related to decrease the insertion loss of MARS, in the meanwhile, avoid lower the optical bandwidth. Goossen provides transition layers of SiN_x on either side of the air gap, and the thickness ratio of the two transition layers is adjusted to provide a tradeoff between the insertion loss of the device and the optical bandwidth. Goossen fails to teach the same feature, "a material of the conductive layer is more difficult etched than a material of the material layer" and "a support structure partially covered by the second electrode" as the present invention.

Accordingly, Applicant respectfully submits that independent claim 1 as amended is allowable over the art of record and respectfully requests the 35 U.S.C. §102(b) rejection of claim 1 to be reconsidered and withdrawn. In addition, insofar claims 2-12 depend from independent claim 1 and add further limitations thereto, the 35 U.S.C. §102(b) rejection of these claims should be withdrawn as well.

Reconsideration and withdrawal of this rejection is respectfully requested.

Double Patenting

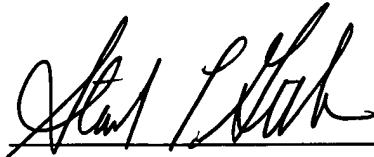
With respect to Double Patenting of the Office Action, the Office Action rejected claims 1-13 under the ground of nonstatutory obviousness-type double patenting over claims 1-17 of US Patent Pub. 2005/0157364 A1, which is now allowed.

The Assignee agrees to sign a terminal disclaimer, which is being submitted herewith, to overcome the rejection under obviousness-type double patenting.

Conclusions

For all of the above reasons, applicants submit that the specification and claims are now in proper form, and that the claims define patentably over prior arts. Therefore applicants respectfully request issuance for this case at the Office Action's earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stewart L. Gitler', is written over a horizontal line.

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